

# **MINUTES OF THE COMMISSION FOR HUMAN RIGHTS**

**May 27, 2011**

**A meeting of the Commission for Human Rights was held in the agency conference room on Friday, May 27, 2011. Present at the meeting were Commissioners Dr. John B. Susa, Nancy Kolman Ventrone, Alberto Aponte Cardona and Iraida Williams. Absent was Commissioner Alton W. Wiley, Jr. Commissioner Rochelle Bates Lee arrived at 1:15pm and Commissioner Camille Vella-Wilkinson arrived at 1:50pm. Commissioner Susa called the meeting to order at 12:35 p.m.**

**A motion was made by Commissioner Ventrone to approve the minutes of April 29, 2011. The motion to approve was seconded by Commissioner Williams and carried.**

**Status Report: Michael D. Évora, Executive Director**

**A written report was handed out. All new information is in bold print.**

**Case Production Report – Attached**

**Aged Case Report - Attached**

## **Outreach Report - Attached**

### **STATUS REPORT - COMMISSIONERS-**

**GENERAL STATUS:** Cynthia Hiatt, Legal Counsel, reported that Commissioner Ventrone has decided to stay on as Commissioner after reviewing her other commitments. There has been no indication as to whether Governor Chafee will reappoint commissioners Lee, Wiley and Susa.

**Commissioner Meeting -2- May 27, 2011**

**OUTREACH:** Commissioner Vella-Wilkinson reported that she will be attending the annual luncheon of the RI Affirmative Action

**Professionals on June 3, 2011.**

**STATUS REPORT - LEGAL COUNSEL** by Cynthia M. Hiatt and Francis Gaschen. Attorney Gaschen spoke about the Commission having a practice or procedure put into place when the Commission has to take a position on controversial issues prior to a meeting of the Commissioners. The Director will draft something for the next meeting.

**LITIGATION:** Report Attached. New information is in bold.

**LEGISLATION:** Commissioners discussed the Civil Unions Bill H6103. Commissioner Lee moved to have the Commission oppose the Civil Unions Bill and Commissioner Vella-Wilkinson seconded the motion. Commissioner Lee moved to oppose the Civil Union Bill as presently written because it legislates discrimination by affording different rights to same-sex couples. All Commissioners present were in favor.

**REGULATIONS:** No report at this time.

## **HEARING SCHEDULE: Discussed**

**Commissioner Meeting -3- May 27, 2011**

**DECISIONS: Commissioner Susa, Ventrone and Cardona discussed the DeCarlo vs. C & D Security Management, Inc. and Frederick Cawley and decided that the complainant did not prove discrimination.**

**Commissioners Susa, Ventrone and Lee discussed the Selvidio Decision. The Commissioners found that the complainant proved that respondent terminated him because of his disability. Commissioners Susa and Ventrone found that the complainant did not prove that the respondent discriminated against him with respect to demotion and denial of reasonable accommodation. Commissioner Lee dissented. The Commissioners decided to award the complainant front pay and back pay and benefits, minus interim**

earnings. Commissioners Susa and Ventrone decided that the complainant did not prove that the discrimination caused him pain and suffering and therefore he would not be awarded compensatory damages. Commissioner Lee dissented.

The meeting adjourned at 2:40 p.m. The next regular meeting will be August 26, 2011 at 12:30 P.M.

Respectfully Submitted,

Michael D. Évora  
Executive Director

Notes taken by: B. Ross  
EXECUTIVE DIRECTOR'S  
REPORT TO COMMISSIONERS  
27 May 2011

## **I. BUDGET**

**S = State/General Revenue; F = Federal (EEOC/HUD); T = Total**

	FY 2011	FY 2011	FY 2012	FY 2011	FY 2012
	(Passed)	(Rev.Req.)	(Request)	(House Rev.)	(House Bill)
S	1,016,877	1,264,214	1,204,098	1,222,547	1,154,038
F	356,689	164,367	301,532	164,367	301,532
T	1,373,566	1,428,581	1,505,630	1,386,914	1,455,570

The Commission's Revised FY 11 and Proposed FY 12 budget requests were submitted to the Governor on October 13. For FY 11, the State Budget Officer has requested a submission realizing a 1.33% reduction in General Revenue. For FY 12, he has requested a submission realizing a 15% reduction in General Revenue (in 5% increments) to "provide the future Governor with some flexibility on choosing cuts". Subsequent to the submission of the budget requests, Robert Bromley, Senior Legislative Fiscal Analyst for the RI Senate, inquired as to the status of the Commission's current lease and its ability to relocate to a state-owned facility. H-5894, the House Budget Bill, authorizes 14.5 FTEs for the Commission for FY 11 and FY 12.

On April 28, the Commission's FY 11 (Revised) and FY 12 budgets were heard before the House Finance Subcommittee on General Government/Public Safety. I attended the hearing, gave a brief presentation on the Commission's accomplishments and challenges in FY 2010 (and to date) and answered questions.

## II. FEDERAL CONTRACTS

**EEOC – For federal FY 2011 (beginning October 1, 2010), according to EEOC Project Director Marlene Toribio, we have closed 143 co-filed cases (as of April 30, 2011). On March 28, an EEOC representative advised that: 1) the per case reimbursement rate would be increased from \$550 to \$600 for FY 2011; 2) each FEPA would receive a contract reduction from the previous fiscal year. Our formal contract with EEOC, received on April 21, is for 221 cases. We must close an additional 78 co-filed cases by September 30 to meet our contract obligation.**

**HUD – For FY 10, according to HUD Project Director Angela Lovegrove, we took in 47 new housing charges, 41 of which were co-filed with HUD. Within this same time period, we processed 48 housing charges, 41 of which were co-filed with HUD.**

**For FY 11, we have taken in 48 new housing charges, 45 of which are co-filed with HUD. Within this same time period, we have processed 44 housing charges, 42 of which were co-filed with HUD.**

### **III. PERSONNEL**

**On April 20, we received formal notification that the request to fill the Investigator position vacated by Susan Pracht had been approved. Betsy submitted a Vacancy Posting on April 21; the application period was April 25 to May 6. The Commission received over 100 applications for the position. An application review team has been**

formed (Cynthia, Frank and Marlene). Upon completion of the review/ranking, a decision will be made as to applicants to be selected for interviews.

#### **IV. OUTREACH – Refer to attached report**

#### **V. GENERAL STATUS**

• Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.

• Case Closures – Refer to attached report.

We ended FY 2010 behind the prior fiscal year's case processing rate.

For FY 09, we processed 444 cases; for FY 2010, we processed 402 cases (approx. 10.5% reduction). For the ten-month period from July 2010 through April 2011, the Commission has processed 346 cases (compare to 334 cases processed in this same time period last year).

• Aged Cases – Refer to attached report.

• Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 10 with 325 cases in inventory. As of 5/26/11, we had a total of 341 cases in inventory; 52 of those cases were pending assignment.



**&#9679;Lease – The Commission’s current five-year lease expires in September. John Ryan, Deputy Chief/Public Buildings, and Frank Gaschen attended a meeting of the State Properties Commission on April 12 and the Commission received approval to negotiate a lease renewal. (The Governor’s FY 12 budget for the Commission includes \$187,909 for rent.)**

**&#9679;Performance Management Initiative – On May 3, I met with members of the Governor’s Policy Staff and State Budget Office to discuss the Governor’s Performance Management Initiative. As follow-up to that meeting, I am in the process of preparing the Commission’s response to a 20-question survey regarding our program performance.**

**&#9679;EEOC National Conference – Marlene Toribio, EEOC Project Director, and I attended the national conference in Chicago from May 17 to May 19. The conference included several informative panels on a variety of topics, including Human Trafficking and Fair Employment, Impact of Budget on Civil Rights Enforcement and Fair Pay. A keynote was delivered by EEOC Chairperson Jacqueline A. Berrien.**

**&#9679;HUD Review: A HUD representative will visit the office on June 9 and 10 to conduct HUD’s annual performance review.**

**&#9679;Computers – I had reported at last month’s Commission meeting that the Commission was in need of a new router to improve**

internet access, which affects everything from our state email accounts to legal research to interactions with EEOC and HUD through IMS and TEAPOTS. At that meeting, Frank suggested that I contact EEOC and HUD to inquire about the availability of grant money to purchase the router (estimated cost: \$6000.00). I am happy to report that, upon receiving my inquiry regarding available funds, HUD informed me that our next contract would include an additional \$6000.00 for the purchase. The recent HUD contract, received and signed by me on September 7, included the \$6000.00 for a new router.

Jay has obtained a formal quote from the State IT department of \$6,193.95 for a new router/hub; this price includes installation. The Commission submitted a purchase order and critical need justification form for Budget Office approval on December 9. Reportedly, Verizon is experiencing delays in filling state purchase orders due to layoffs in December and January. The Commission has canceled its purchase order and, having identified another vendor who can supply the router at a significant cost reduction, has sought and obtained approval to order the router from that vendor.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

To: Commissioners

**From: Cynthia Hiatt and Frank Gaschen, Legal Counsels**

**Re: Litigation**

**Date: May 27, 2011**

**Recent developments are in bold.**

## **AMICUS BRIEF**

**The Commission has agreed to consider filing an amicus brief with the Rhode Island Supreme Court with respect to a case in which the Superior Court granted summary judgment to the employer even though the employer had given inconsistent reasons for the plaintiff's termination and there was evidence that impaired the employer's credibility.**

### **Aquidneck Island v. RICHR, et al.**

**This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale not Aquidneck. Case is moot now. An offer of \$2500 was made by counsel to the plaintiff to settle all of the claims against Cardinale and his companies. The offer was not satisfactory.**

### **Babbitt v. Crescent Park Manor, et al.**

**The Commission intervened as a party plaintiff in this case. A discovery deposition was held. Defendants' Motion for Summary Judgment was denied. The case has been transferred to Judge Stern before whom the matter will be heard, probably in late summer.**

**Bagnall v. RICHR and WLWC et al.**

**The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. On April 22, 2008, the complainant's attorney filed his brief. The Commission's Brief was filed on August 27, 2008. The Commission received the respondent's brief on December 5, 2008. In November, 2010, the complainant filed a stipulation to assign the appeal for a written decision by the Superior Court. The appeal was assigned to Justice Netti Vogel.**

**BHDDH (MHRH) v. RICHR and the Estate of Dr. John Satti**

**BHDDH appealed the Commission decision that BHDDH retaliated against Dr. Satti and discriminated against him on the basis of his age. BHDDH filed its Brief on August 7, 2008. On October 21, 2008, the Commission filed the administrative record. On January 14, 2009, the Commission filed its brief. The complainant's brief is pending; the complainant's attorney has indicated that she is working on it.**

**Chamber of Commerce v. Whiting – U.S. Supreme Court (5/26/11)**

**The Chamber of Commerce had challenged an Arizona law which required all state employers to use the E-verify system to check whether new employees were authorized to work and that rescinded “licenses”, including articles of incorporation, of companies who knowingly employed unauthorized workers. (The law in question in**

this case is not the more severe Arizona law which is still being challenged in court.) The Chamber argued that the Arizona law conflicted with federal immigration law. The Supreme Court held that the Arizona law did not conflict with federal law. The Supreme Court discounted fears that employers would discriminate because of fears that their licenses would be revoked if they employed unauthorized workers. The Supreme Court stated that strong state and federal anti-discrimination laws would deter employers from discrimination.

#### **Ezersky v. Rite-Way Forms, Inc.**

On October 8, 2009, the complainant filed a petition to enforce the Commission Order. The petition was granted on October 23, 2009. The complainant's attorney has consulted with Attorney Gaschen. She is working with a collections attorney.

#### **Gaffney v Town of Cumberland et al**

The respondent appealed the Commission decision. In November, 2007, Judge Savage remanded the Commission Decision for the Commission to determine how the Commission would evaluate the evidence, given the conclusions reached in her decision. Judge Savage also asked the Commission to re-assess its Order. After numerous efforts to reach a resolution between the parties, and submissions by the parties in the winter and spring of 2009, the case was taken under consideration by the Commission. A decision in the case issued on March 12, 2010. On April 14, 2010, the respondents appealed. The administrative record was filed in early July, 2010.

Justice Gale assigned the new appeal to Justice Savage, in accordance with her order on the previous appeal. The Town filed its brief on February 18, 2011. The briefs of the Commission and the Gaffneys are due April 21. The Commission filed its brief on April 8, 2011. Mrs. Gaffney's attorney decided that he would not file a separate brief, he filed a statement indicating that Mrs. Gaffney supports the arguments made by the Commission. The Town filed its reply brief on May 26.

#### **J.J. Gregory and Sons v. RICHR and Brenda Zeigler**

The Commission found that J.J. Gregory and Sons discriminated against Brenda Zeigler because of her sex. J.J. Gregory and Sons filed an appeal. Its appeal was amended to include an appeal of the Commission's Decision on Damages and Attorney's Fees. The Commission filed the record on February 14, 2008. Respondent filed its brief on January 5, 2009. The complainant filed her brief on January 29, 2009. The Commission filed its brief on February 9, 2009.

On February 10, 2009, the appeal was assigned to Judge Judith Savage for decision. On March 10, 2011, Justice Savage issued a decision upholding the Commission's finding of discrimination. The complainant's attorney has drafted an Order for Justice Savage. He may file a motion for supplemental attorney's fees with the Commission.

#### **Laboy v. Stat Health Services, et al.**

Counsel is trying to locate respondent's officers to bring a suit to

**enforce the Commission Decision. Corporate charter revoked and the individual defendant cannot be located.**

**Manfredi v. Donna Conway, et al.**

**The respondents appealed the Commission Decision denying the respondent's motion to dismiss on the grounds of qualified immunity.**

**Cross-appeal filed by the Civil Prosecutor relating to the Commission's consideration of reconsideration. This case is close to being settled (multiple matters).**

**RICHR (Lovegrove) v. Escolastico**

**A Rhode Island judgment was obtained and sent to a Florida lawyer for collection. Counsel is waiting for Ms. Lovegrove to forward funds to the Florida counsel to begin Supplementary Proceedings against Mr. Escolastico.**

**RICHR (Manfredi) v. Donna Conway, et al.**

**The Commission filed a complaint in Superior Court alleging violation of Manfredi's rights under the Fair Housing Act. Conway has been served. The respondents moved this case to Federal Court. This case is close to being settled (multiple matters).**

**RICHR (Martin) v. Cardinale, et al.**

**A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act was filed against Norman Cardinale, et al. Motions for Entry of Default were granted. An offer**

**of \$2500 was made to the plaintiff to settle all of the claims against Cardinale. The offer was not satisfactory.**

**RICHR (Martin) v. Cardinale, et al.**

**A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against defendants. Motions to compel will be filed. An offer of \$2500 was made to the plaintiff to settle all of the claims against Cardinale. The offer was not satisfactory.**

**RICHR (Morin) v. Teofilo Silva, et al.**

**A complaint for enforcement was filed on 3-24-05. Service of the complaint will be made once respondent can be located.**

**RICHR (Robinson) v. Geruso, Flagship Management, et al.**

**After a finding of probable cause, a complaint against six defendants was filed in Superior Court alleging racial discrimination in a failure to rent case. The case was settled and HUD notified. RICHR will monitor the case for three years. The first report, due March 19, 2010, was received.**

**RICHR (Wright) v. New Canonchet Cliffs, et al.**

**The Commission found probable cause and the respondents elected in this housing case that alleges failure to give a reasonable accommodation regarding a support animal (the respondents claimed that the dog was too big for a pet). Suit was filed in Washington**



**County Superior Court. Discovery will commence shortly.**

**RICHR (Switzer) v. Principe and TEN SEVENTY EIGHT MAIN**

**The Commission found probable cause and the respondents elected in this housing case that alleges familial status discrimination. Default Judgments were entered against both defendants. New counsel has filed a motion to remove the defaults, which was granted. Attempts will be made to settle the case.**

**RICHR v. Shear Pleasure**

**This case was filed in the Providence County Superior Court to enforce a negotiated settlement and the defendant was defaulted. Execution was returned unserved as sheriff could not locate the officer of the defendant.**

**RICHR (Zeigler) v. Laura Sitrin, Finance Dir. of Newport**

**The case is resolved. The Commission must annually monitor City training. Training was completed for 2009. I am sending a letter requesting training for this year.**

**Subpoena2**

**A plaintiff suing two defendants in one case has subpoenaed charges in other Commission cases filed against the same defendants for a ten year period. After the plaintiff agreed to narrow the scope of one of the subpoenas, Counsel has now complied with the subpoenas relating to both defendants.**